

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>ASSOCIATION OF ELECTRICAL CONSTRUCTION ENGINEERS</b>	:	<b>DETERMINATION DTA NO. 817121</b>
for Review of a Denial of an Application for Exempt Organization Status under Articles 28 and 29 of the Tax Law.	:	

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Petitioner, Association of Electrical Construction Engineers, Attn: Michael A. Miller, c/o Consolidated Edison, 4 Irving Place, Room 1214, New York, New York 10003, filed a petition for review of a denial of an application for exempt organization status under Articles 28 and 29 of the Tax Law.

On June 16, 1999, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition pursuant to 20 NYCRR 3000.9(a)(4) on the basis that the petition had not been filed in a timely manner. On October 28, 1999, an order was issued concluding that there remained an unresolved material question of fact on the issue of timeliness, and the matter was to be heard on such unresolved question of fact. On November 30, 1999 and December 21, 1999, respectively, petitioner, appearing by its treasurer Michael A. Miller, and the Division of Taxation, by Barbara G. Billet, Esq., (Christina L. Siefert, Esq., of counsel) agreed that the issue of timeliness could be resolved without a hearing via documents and briefs to be submitted by March 24, 2000, which date commenced the six month period for issuance of this determination.

After due consideration of the documents and arguments submitted, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly addressed a letter to petitioner denying petitioner's application for exempt organization status such that a petition challenging the denial, mailed more than 90 days after the date of mailing of the denial letter, must be dismissed as not timely filed.

***FINDINGS OF FACT***

1. Petitioner, Association of Electrical Construction Engineers, filed an application with the Division of Taxation ("Division") seeking exempt organization status, pursuant to Tax Law § 1116(a)(4), with respect to sales and use taxes.

2. By a letter dated January 27, 1999, the Division denied petitioner's application. The Division's letter indicates that petitioner failed to meet the requisite organizational and operational tests for exempt organization status.

3. Petitioner challenged the denial of its application by filing a petition with the Division of Tax Appeals. The petition is dated as signed on May 25, 1999 and bears a stamp indicating receipt by the Division of Tax Appeals on May 28, 1999. The envelope in which the petition was filed, by first class mail, bears a United States Postal Service postmark date of May 26, 1999. The petition challenges the substantive merits of the Division's denial of petitioner's application.

4. On June 16, 1999, the Division of Tax Appeals issued to petitioner a Notice of Intent to Dismiss Petition. This notice advises that a petition challenging denial of exempt organization status must be filed within 90 days from the date of the denial letter (citing 20 NYCRR 590.11).

The notice further states that the denial letter in this instance was issued on January 27, 1999, but the petition was not filed thereafter until May 26, 1999, a span of some 119 days. Therefore, the petition was subject to dismissal for lack of timeliness.

5. Petitioner responded to the notice by a letter dated June 21, 1999. This letter, authored by petitioner's treasurer, Michael A. Miller, states that 20 NYCRR 590.11 requires that a protest must be filed within 90 days from the date of *receipt* of the denial letter, as opposed to its issuance date. The letter further claims that the petition should be considered filed on the date it was signed, i.e., May 25, 1999, rather than the May 26, 1999 date on which it was mailed. Finally, the letter alleges that correspondence from the Division was consistently delayed, lengthy and untimely.

6. The parties were afforded the opportunity to submit documents and arguments in support of their respective positions concerning the notice of intent to dismiss the petition as untimely. On October 28, 1999, after review of the parties' arguments on the issue of whether the petition was timely filed, an order was issued. This order held that the Division had in fact mailed the denial letter on January 29, 1999 and that the letter was delivered thereafter as addressed on February 3, 1999. However, it was not clear from the record whether the denial letter had been properly addressed as required. In turn, assuming an incorrect address had been used, petitioner's time within which to protest the denial would not have started with the date of mailing of the denial letter, but rather would have been tolled until the date of actual receipt of the letter by the intended recipient, i.e., the correct addressee. As a result, the matter could not be concluded by a Notice of Intent to Dismiss because there existed an unresolved material question of fact.

7. The specific unresolved question of fact which precluded determination on the Notice of Intent to Dismiss Petition was whether the address to which the denial letter was mailed should have included the name of petitioner's treasurer, Michael A. Miller. The record for purposes of the Notice of Intent to Dismiss Petition did not include petitioner's application for exempt status, which would have provided petitioner's specific "last known address" to which the denial letter should have been mailed. Accordingly, the October 28, 1999 order concluded that the matter should be scheduled for hearing to resolve the question of petitioner's correct last known address. In lieu of a hearing the parties agreed to submit the matter for determination based on documents and written arguments.

8. The parties submitted essentially the same documents as were provided in response to the Notice of Intent to Dismiss Petition, with the notable addition that the Division also supplied petitioner's Application for an Exempt Organization Certificate ("Form ST-119.2"). This application is dated November 20, 1998, is date stamped as received by the Division on November 30, 1998, and is signed on petitioner's behalf by Michael A. Miller, Treasurer. Information at the top of the application lists the name of the organization (petitioner herein) as "Association of Electrical Construction Engineers" and lists the following specific address for the organization: "4 Irving Place, room 1006-S, New York, N.Y. 10003-3598." The address section of the application does not list Mr. Miller's name. Instead, the section immediately below the address section is entitled "Name and telephone number of person to be contacted (if the person is someone other than an officer, this application must be accompanied by a power of attorney executed by the officer)." This section lists the following: "Michael A. Miller, Treasurer, [phone number]."

#### ***CONCLUSIONS OF LAW***

A. Tax Law § 1116(a)(4) provides exemption from sales and use taxes for organizations which are organized and operated exclusively for charitable, educational or other specified purposes, where no part of the net earnings of such organization inures to the benefit of any private shareholder or individual and where such organization does not engage in proscribed legislative or political activities. Petitioner has applied for exempt organization status under section 1116(a)(4) but the Division, upon review of petitioner's application, denied the same by letter dated January 27, 1999.

B. As detailed in the October 28, 1999 order, the Division introduced adequate proof of its standard mailing procedures for documents such as letters of denial, offered adequate proof to establish the fact that the denial letter in this case was actually mailed on January 29, 1999 and, via PS Form 3811 (Domestic Return Receipt), established that the denial letter was delivered *as addressed* on February 3, 1999. Therefore, the only remaining question is whether the Division incorrectly addressed the denial letter it mailed by failing to include Michael A. Miller's name as a part of the address, resulting in delay in its delivery to the specific intended addressee and forming a basis for tolling the period of limitations on protest until such time as Mr. Miller actually received the denial letter (*see, Matter of Combemale*, Tax Appeals Tribunal, March 13, 1994).

C. Petitioner's argument that the denial letter was incorrectly addressed for failure to include Mr. Miller's name is rejected. In this case, the Division used the precise address listed by petitioner on the face of its Application for Exempt Organization Certificate, and such address did not include Mr. Miller's name. The Division faithfully complied with the statutory mandate that a notice, in this case a denial letter, is to be mailed to the person or organization for whom it is intended at the address given in the last return filed or in any application made (Tax Law §

1147[a][1]; *Matter of Service Merchandise Co., Inc.*, Tax Appeals Tribunal, January 14, 1999). That is, the Division properly mailed the letter on January 29, 1999 to the exact address listed for petitioner in the relevant application filed by petitioner. In turn, delivery of the letter to the correct intended addressee, i.e., petitioner, occurred on February 3, 1999, well within the 90-day period within which a protesting response (i.e., a petition) could be filed. Unfortunately, the petition in response was not filed within 90 days of the January 29, 1999 mailing date, and thus the petition was not timely filed. Accordingly, the Division of Tax Appeals has no jurisdiction to address the merits of petitioner's application for exempt organization status and the matter must be dismissed (*Matter of Roland*, Tax Appeals Tribunal, February 22, 1996). With regard to the fact that Mr. Miller's name was not included as part of the address to which the denial letter was mailed, it remains that petitioner could (and perhaps should) have listed Mr. Miller's name in the address section of the application. This would have required the inclusion of his name as part of the address (*Matter of Combemale, supra.*), and might have limited any possible delivery delay with incoming correspondence (including time sensitive correspondence) which petitioner might have anticipated within its own organization (*Matter of Service Merchandise Co., Inc., supra*).

D. The petition of Association of Electrical Construction Engineers is hereby dismissed.<sup>1</sup>

DATED: Troy, New York  
June 29, 2000

/s/ Dennis M. Galliher  
ADMINISTRATIVE LAW JUDGE

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<sup>1</sup> As noted in the October 28, 1999 Order, there is no apparent bar to petitioner refiling its application for exempt status and, upon such application being denied, filing a timely petition contesting such denial.